



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED

09 DECEMBER 2022

SIGNATURE

DATE

**Case No: 045818/2022**

In the matter between:

**SWALLOWS FC**

Applicant

and

**AUSTIN KAUNDA WOWOWO  
NATIONAL SOCCER LEAGUE**

1<sup>ST</sup> Respondent

2<sup>ND</sup> Respondent

**Case No: 046387/2022**

In the matter between:

**ROYAL FOOTBALL CLUB**

Applicant

and

<b>NATIONAL SOCCER LEAGUE</b>	1 <sup>ST</sup> Respondent
<b>KGOSIETSILE MOLOKWANE</b>	2 <sup>ND</sup> Respondent
<b>DITHEKO MOTOTO</b>	3 <sup>RD</sup> Respondent
<b>SIMON GOPANE</b>	4 <sup>TH</sup> Respondent

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## JUDGMENT

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**COWEN J**

### Introduction

1. On 8 December 2022, I made orders in the above two matters, attached for ease of reference. Both matters concern the dispute resolution procedures of the National Soccer League (the NSL)<sup>1</sup> and the South African Football Association (SAFA)<sup>2</sup>. Both came before me on the urgent roll on 22 November 2022 and I heard them together on 26 November 2022. I did so after affording SAFA an opportunity to participate, which it declined to do. I now give my reasons for my orders.<sup>3</sup>
2. In the first matter,<sup>4</sup> Swallows Football Club (SFC) applied to interdict the NSL from enforcing an award of the NSL's Dispute Resolution Chamber (DRC) dated 29 September 2022 by deducting amounts from its monthly grant and paying them to the first respondent, Mr Austin Kaunda Muwowo, pending finalization of appeal proceedings before SAFA's Arbitration Tribunal. In the

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<sup>1</sup> An association of professional football clubs which promotes, administers, controls, governs and regulates professional football in South Africa and is a special member of SAFA.

<sup>2</sup> Being the national association governing football in South Africa to which the NSL is affiliated.

<sup>3</sup> I was unable to complete the judgments at the time I delivered the orders due to unavailability of power supply at the time.

<sup>4</sup> Case number 045818/2022.

second matter,<sup>5</sup> Royal AM Football Club (RAMFC) also applies to interdict the NSL's enforcement of DRC awards, payable to the second, third and fourth respondents, being Mr Kgosietsile Molokwane, Mr Ditheko Mototo and Mr Simon Gopane. The awards in question are dated, respectively, 16 March 2022, 1 September 2022 and 24 October 2022. In respect of Mr Mototo and Mr Gopane, the RAMF is seeking to prosecute appeals before the SAFA Arbitration Tribunal. In respect of Mr Molokwane, that appeal process has been exhausted and review proceedings are pending before this Court.

3. I heard the matters together in circumstances where I considered it to be in the interests of justice to determine an issue that is common to three of the matters. The issue does not arise in Mr Molokwane's matter, which I deal with separately below. The common issue is whether the lodgment of an appeal against a decision of a non-disciplinary nature of the DRC suspends the decision pending the determination of the appeal or not. Appeals against these decisions lie with SAFA's Arbitration Tribunal. On the evidence before me there is understandable uncertainty and confusion about the import of the applicable rules on this issue, and, unless certainty prevails, unnecessary litigation will invariably result. I have been assisted in this regard both by submissions from the parties and from the NSL's legal counsel, Mr Michael Murphy.
4. I deal first with the interpretation of the applicable rules. I conclude that the lodgment of an appeal does not suspend the operation of the decision but that an appellant may request the arbitrator of the Arbitration Tribunal to make such

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<sup>5</sup> Case number 046387/2022

an order, which lies in their power to grant. I then explain the consequences of the interpretation to the matters before me. Thereafter, I deal with the position of Mr Molokwane.

## **Interpretation of the NSL and SAFA Rules**

5. The NSL rules are set out mainly in the National Soccer League Handbook (the NSL Handbook). The rules deal differently with disputes of a disciplinary and a non-disciplinary nature.<sup>6</sup> All the matters before me are non-disciplinary in nature<sup>7</sup> and Rule 23, titled Dispute Resolution Chamber, applies. The DRC is described in Rule 23.1 as ‘an independent arbitration tribunal vested with the authority to adjudicate disputes other than those of a disciplinary nature or which are status matters arising from international transfers.’<sup>8</sup> Its powers are set out in Rule 23 and include, amongst others, condoning late referrals and providing urgent or interim relief, ordering a party to pay damages, compensation, salaries, signing-on fees and transfer fees, including those relating to an image-right dispute, sporting sanctions, specific performance, varying or rescinding awards, issuing declaratory relief and awarding costs.<sup>9</sup> Clause 23.4 is titled ‘Awards final and binding’ and provides, in effect, that the DRC’s decisions are final and binding although subject to appeal or review before the SAFA Arbitration Tribunal.

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<sup>6</sup> Disputes of a disciplinary nature are dealt with in terms of Rule 22.

<sup>7</sup> The types of disputes that fall within the jurisdiction of this body are set out in Clause 23.2.1 which provides that the DRC has jurisdiction over, inter alia, determination of the following issues or disputes: - disputes between member clubs, employer-related disputes between a member club and a player, employment-related disputes between a member club, a coach and any other employee who is part of the member club’s technical team, employment related disputes between a member club official and a member club and training and development compensation and / or solidarity payment disputes.

<sup>8</sup> The rules explain that status matters arising from international transfers fall within the competence and jurisdiction of the FIFA Players Status Committee.

<sup>9</sup> Rule 23.2.3

6. Clause 24, titled 'Appeals' reads as follows:

'24.1 Awards of the Dispute Resolution Chamber may be the subject of an appeal or a review to the SAFA Arbitration Tribunal.

24.2 A copy of any notice of any appeal must be served on the League at the time of the appellant lodging an appeal with the SAFA Arbitration Tribunal in accordance with the applicable SAFA rules.'

7. Clauses 25 and 28 impose a duty on member clubs, players, coaches and member club officials to exhaust internal procedures before approaching a Court in respect of matters that can be determined or decided in terms of the League Rules, the NSL Handbook or the SAFA, FIFA<sup>10</sup> or CAF<sup>11</sup> Statutes.

8. Clause 26 is also titled 'Appeals' and reads: '

'26.1 Appeals against decisions of the Judicial Tribunals<sup>12</sup> (save where the Dispute Resolution Chamber arbitrates disputes which will in the event of an appeal be referred directly to the SAFA Arbitration Tribunal) will be regulated by the SAFA and FIFA Regulations.

26.2 The League must be served with a copy of every notice of appeal by the appellant at the time that the appeal is lodged with SAFA in accordance with the SAFA Statutes.

26.3 An appeal against an order of the Disciplinary Committee or the Dispute Resolution Chamber will not suspend the operation of that order pending the finalisation of any appeal or arbitration in respect of that order.'

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<sup>10</sup> The Fédération Internationale de Football Association, being the international governing body of football.

<sup>11</sup> The Confederation Africaine de Football, being the continental federation regulating football on the African continent

<sup>12</sup> Defined in the NSL Handbook to mean the Disciplinary Committee and the Dispute Resolution Chamber.

9. Clause 27 is titled 'Arbitration' and provides that disputes or differences regarding decisions, ruling or awards of the DRC or the SAFA Appeals Board are to be referred to arbitration pursuant to and conducted in accordance with the SAFA Statutes. There is no provision equivalent to Clause 26.3 in Clause 27. Rather Clause 27.4 provides that the arbitrator's decision is final and binding. The matters before me are appeals.

10. The Court has been provided with a copy of the SAFA Statutes.<sup>13</sup> Its judicial bodies are identified under Article 49 titled 'Independent Committees' and regulated under Article 53, titled 'Judicial Bodies'. Notably, the Arbitration Tribunal is not mentioned: these bodies deal with disciplinary and ethical matters. Arbitration is regulated by Article 58, titled 'Arbitration', which provides, in relevant part:

'58.1 SAFA shall establish an Arbitration Tribunal, which shall deal with all further appeals from the decision of the National Appeals Committee and the decision of an arbitrator shall be final and binding.

58.1.1 .... to 58.1.3 ....

58.2 The SAFA NEC shall draw up special regulations regarding the composition, jurisdiction and procedural rules of this Arbitration Tribunal.

58.4 Where no specific dispute prevention or resolution procedures are set in the Statutes, Rules and Regulations, or where any Member or an affiliate of a Member, or individual prefers to, disputes may be referred directly to arbitration for resolution. It is specifically provided that where Regional Members or its affiliates or individual opt for arbitration, such arbitration may be conducted by a senior lawyer in the Province consented to by the parties.

58.5 Subject to the Constitution of the Republic, and save in circumstances where there is a need for urgent relief of a sort which cannot be obtained

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<sup>13</sup> Last amended by the SAFA Ordinary Congress held on 26 March 2022 at the Sandton Convention Centre.

through the dispute resolution procedure contemplated by this article, no body or individual falling under the jurisdiction of SAFA shall approach a Court of Law to decide on a dispute it has with a body or individual affiliated to SAFA.

58.6 The powers of an arbitrator shall be defined in the disciplinary code.

11. The parties' representatives informed me and Mr Murphy confirmed that the SAFA NEC has not drawn up special regulations regarding the composition, jurisdiction and procedural rules of the Arbitration Tribunal as required by Article 58.2.<sup>14</sup>

12. The absence of regulations is not decisive in view of Article 58(6). The SAFA Disciplinary Code<sup>15</sup> identifies SAFA's judicial bodies as the Disciplinary Committee, the Appeal Board and the Arbitration Tribunal.<sup>16</sup> Arbitration is dealt with in Article 81. Article 81(11) provides: 'Notwithstanding anything contained in these Rules, the powers of the arbitrator shall be wide and shall be determined by the arbitrator at his sole discretion.'

13. Importantly, Article 81 does not deal with whether the lodgment of any appeal with the Arbitration Tribunal suspends the effect of the decision under appeal. This can be contrasted with the provisions of Article 125 which regulates the effect of appeals that go to the Appeal Committee (being disciplinary in nature). Article 125(2), specifically, states that such an appeal 'does not have a suspensive effect except with regard to orders to pay a sum of money.'

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<sup>14</sup> I was informed that there is a collective bargaining agreement in place between the NSL and the South African Football Players Union, which deals, inter alia, with procedures applicable to the DRC. After hearing the parties, it was agreed that Mr Murphy may supply the Court with a copy on a confidential basis with the sole purpose of enabling the Court to confirm that its provisions do not, as Mr Murphy understood, deal with the issue before the Court. I am satisfied that they do not resolve the matter.

<sup>15</sup> The version supplied to the Court is dated 18 August 2012

<sup>16</sup> Article 73.

## **Confusion and interpretation**

14. Article 125(2) is the source of confusion in the matters before me. The applicants submitted that Article 125(2) applies to appeals before the Arbitration Tribunal. In doing so, they place reliance on a letter dated 22 June 2022 written by SAFA's CEO, Mr Tebogo Motlanthe to the applicants' attorney. The letter is in respect of case number 046387/2022 and is in connection with Mr Molokwane's matter specifically: Mr Motlanthe is responding to a request seeking clarity regarding the procedure for suspension of the NSL DRC order in respect of Mr Molokwane. The letter advises, unequivocally and relying on Article 125(2) of the SAFA Disciplinary Code, that the order would be suspended pending the appeal or arbitration before SAFA where sounding in money.

15. Counsel for the respondents, and Mr Murphy for the NSL, however, submitted that Article 125(2) is inapplicable to appeals before the Arbitration Tribunal and applies only to appeals before the Appeal Committee. According to Mr Murphy, the only provision that deals expressly with the suspension of any order of the DRC in non-disciplinary matters is found in Article 26.3 of the NSL Handbook which I repeat for convenience. It provides: 'An appeal against an order of the Disciplinary Committee or the Dispute Resolution Chamber will not suspend the operation of that order pending the finalisation of any appeal or arbitration in respect of that order.' Mr Murphy contended, however, that this does not mean that an aggrieved party need come to court for relief pending the outcome of an



appeal before the Arbitration Tribunal as the arbitrator has the power to suspend an order subject to the exercise of a discretion. This power, it is said, derives from Article 81(11).<sup>17</sup> That approach, Mr Murphy says, is consistent with the broader scheme of the rules applicable to football at its different levels and accords with the principles underpinning dispute resolution which, for obvious reasons germane to the world of football, require expeditious internal resolution of disputes.

16. I am not apprised of the reasons why SAFA has not complied with the duty to make regulations regarding the composition, jurisdiction and procedural rules of the Arbitration Tribunal as required by Article 58.2. On the face of it, this is unfortunate. Such regulations could, if properly attended to, provide certainty and limit the need for litigation of the sort before me, which is the clear intention of the instruments governing both SAFA and the NSL. It is also unfortunate that there is an apparent absence of consensus between the NSL and SAFA regarding the effect of the lodgment of an appeal with the SAFA Arbitration Tribunal against a decision of the NSL's DRC, and in turn, communications with affected parties are not consistent. In this regard, there is correspondence on record (also in case number 046387/2022) dated 9 September 2022 written by Mr Murphy to the applicants' attorneys, being the same in all matters. The letter refers to the history of the matter concerning Mr Molokwane and in concluding, refers to remedies available to aggrieved parties to approach a court or tribunal of competent jurisdiction to enforce or suspend the award. At that stage Mr Molokwane had exhausted the process before the SAFA Tribunal and had

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<sup>17</sup> See paragraph 12 above.

instituted review proceedings in this Court. There is also an e-mail dated 25 October 2022 from Mr Murphy which, similarly, assumes that orders will be implemented absent an order from a court or tribunal seized with the matter. That email references all matters in the RAMFC case. I can only assume that Mr Murphy was not apprised of the letter or advices from Mr Motlanthe as, had he been, he would surely have both engaged SAFA and in turn explained more clearly the processes as he understood them.

17. In my view, the interpretation that Mr Motlanthe yields a better result than the one given by Mr Murphy. Nevertheless, I have concluded that the interpretation Mr Murphy gives to the rules is the legally correct one. Put simply, when dealing with appeals from the DRC to the Arbitration Tribunal, the default position is as expressly stated in the NSL Handbook that the lodgment of an appeal does not suspend its operation (Article 26.3), and on its own terms, Article 125(2) of the Disciplinary Code does not apply. However, an aggrieved party may request the arbitrator to suspend its operation under Article 81(11) of the SAFA Disciplinary Code read with Article 58(6) of the SAFA Statute. The arbitrator's powers are wide and, to ensure fairness and justice, must extend to a request to suspend an order of the DRC while an appeal before the Arbitration Tribunal is pending.<sup>18</sup> I have reached this conclusion applying the principles relating to the interpretation of documents set out in recent decisions of the Supreme Court of Appeal and Constitutional Court and having regard simultaneously to

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<sup>18</sup> I am satisfied that this approach accords with the decision in *Polokwane City Football Club v South African Football Association and Others*; *TS Sporting Football Club v South African Football Association and Others* [2021] ZAGPJHC 64 at para 31.

text, context and purpose.<sup>19</sup> The interpretation sits comfortably with the express language and logic of the regulatory scheme as set out above. Moreover, it is clear from the broader scheme of the statutes and codes that, without ousting courts' jurisdiction, the expeditious and cost effective internal resolution of disputes is a primary concern of those who are bound by them. It is also a legitimate concern worthy of protection given the sporting environment and the interests of respective stakeholders, in these cases, clubs, coaches and players.<sup>20</sup> And if the SAFA Arbitration did not have the power to suspend orders pending appeals, it would create an untenable situation requiring parties aggrieved by a decision of the DRC regularly to approach courts urgently, something the statutes and codes are astute to avoid.

### **The implications of the interpretation**

18. As indicated above, there are three separate matters in case no 046387/2022.

One is that of Mr Molokwane, dealt with below. In Mr Mototo's matter (RAMFC v Mr Mototo), the DRC made its decision on 1 September 2022. The orders entail payment of various amounts including R840 000 damages and other amounts in salary, severance, leave pay and compensation. The RAMFC's

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<sup>19</sup>Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) at para 18 cited with approval by the Constitutional Court in Airports Company South Africa v Big Five Duty Free (Pty) Limited and Others [2018] ZACC 33 at para 29. See too Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk [2013] ZASCA 176; [2014] 1 All SA 517 (SCA); 2014 (2) SA 494 (SCA). University of Johannesburg v Auckland Park Theological Seminary and another [2021] ZACC 13; 2021(8) BCLR 807 (CC); 2021(6) SA 1 (CC); Capitec Bank Holdings Limited and another v Coral Lagoon Investments 194 (Pty) Ltd and others [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022(1) SA 100 (SCA).

<sup>20</sup> The remarks of the Constitutional Court in context of internal appeals where administrative action is in issue have force in this context too. See Koyabe and Others v Minister for Home Affairs and Others (CCT 53/08) [2009] ZACC 23; 2009 (12) BCLR 1192 (CC) ; 2010 (4) SA 327 (CC)

appeal to the SAFA Arbitration Tribunal is apparently sent on 26 September 2022. In Mr Gopane's matter (RAMFC v Mr Gopane), the DRC made its decision on 24 October 2022 and the appeal to the SAFA Arbitration Tribunal is apparently sent on 28 October 2022.

19. In case no 025818 (Swallows FC v Mr Muwowo), the DRC made its decision on 29 September 2022. The order entails a determination that Swallows FC is indebted to Mr Muwowo in a net amount of R227 977.59 being a shortfall in salary payments for November and December 2021 and March 2022 and a net amount of R648 940.40 being outstanding salaries for January, February, April, May and June 2022. In the event that Swallows FC fails to pay these amounts, the NSL is directed to deduct amounts from its monthly grant. The appeal is dated 19 October 2022.

20. As appears from the above, it is only the decision in Mr Gopane's matter that was of genuinely recent origin. However, the applicant's difficulties arose due to uncertainty created by the correspondence I refer to above from, respectively, SAFA's Mr Motlanthe and the NSL's Mr Murphy. The e-mail that ultimately generated the litigation is dated 25 October 2022. As I indicated during the hearing, and save perhaps in respect of Mr Gopane's matter, I entertained concerns about self-created urgency in these matters. However, I ultimately took the view that it was in the interests of justice to deal with the matters because of the uncertainty that prevailed. Assuming SAFA's Arbitration Tribunal deals swiftly with the matters, which, Mr Murphy assured me, it

routinely does, all the appeals affected by my orders ought to be resolved in the very near future.

21. The orders I made entail a brief suspension of the DRC orders that are subject to an appeal process solely to enable the applicant to request a suspension of the decisions pending the outcome of the appeals before the SAFA Arbitration Tribunal. If the applicants do not make these requests by 10 am on Monday 12 December 2022, then the suspension order lapses. If the applicant does make the request, then the suspension order operates until the arbitrator takes a decision.

22. These orders are accordingly, in nature, temporary interdicts, to which I am satisfied the applicant is entitled on the common cause facts. The applicant is entitled to request a suspension. The confusion that prevailed is not of its own making. It will be deprived of that right if not afforded an opportunity to make the request and have it timeously considered. Ultimately justice will be best served of course, if the arbitrator acts swiftly to determine the appeals themselves.

23. This does not mean that the defences that the respondents have raised are of no importance. Indeed, they could be decisive. But they can appropriately be raised in response to any request made to the arbitrator to suspend the operation of the order, and if that request is granted in the appeal itself. As for costs, I concluded that each party should carry their own costs as I am unable to ascribe ultimate blame or responsibility for the state of affairs to any of the cited parties.

**Mr Molokwane**

24. The position in respect of the dispute between RAMFC and Mr Molokwane stands on a different footing. As indicated above, in this matter, the appeal process before the SAFA Arbitration Tribunal is complete, with a decision given on 6 August 2022. A review application is pending before this Court under case number 23556/2022. The review application was instituted as far back as 23 August 2022. It is inexplicable why the applicant waited until now to seek any urgent relief. The contention made that there are factual and legal issues that overlap with the other matters cannot justify the delay, not least because these are not matters that were being prosecuted together before the respective dispute resolution bodies and the affected respondents assert distinct rights. As the order reflects, I accordingly declined to consider Mr Molokwane's application on an urgent basis, and I made a resultant order for the costs of the urgent application.



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**S COWEN**

**JUDGE OF THE HIGH COURT PRETORIA**

*Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 9 December 2022.*

**HEARD ON 25 NOVEMBER 2022**

**ORDERS GRANTED ON 8 DECEMBER 2022**

**JUDGMENT DELIVERED ON 9 DECEMBER 2022**

**APPEARANCES Case No: 045818/2022**

**On behalf of the Applicant: Adv. LE Thobejane**

**Instructed by: Botha Massyn & Thobejane**

**On behalf of the Respondents: Adv Kiletjie Mokoatlo**

**Instructed by: Razano Attorneys**

**APPEARANCES: Case No: 046387/2022**

**On behalf of the Applicant: Adv. LE Thobejane**

**Instructed by: Botha Massyn & Thobejane**

**On behalf of the Respondents: Adv B Braun**

**Instructed by: Brink De Beer, Potgieter Attorneys**